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# Memorandum

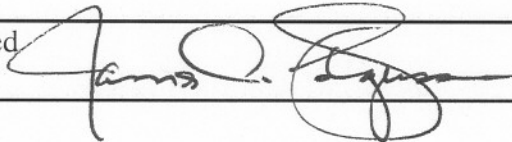
**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Carl W. Mosher

**SUBJECT:** SEE BELOW

**DATE:** 2-4-05

Approved



Date

2.4.05

## SUPPLEMENTAL

**SUBJECT: ACTIONS REGARDING THE MEMORANDUM OF AGREEMENT FOR  
THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION  
PREVENTION PROGRAM**

### REASON FOR SUPPLEMENTAL MEMO

Recommendations regarding this subject were originally scheduled for Council consideration on January 25, 2005, but deferred to February 8, 2005 (item 2.3) Council in light of emerging events. On January 18, the Board of Director of the Santa Clara Valley Water District took a series of actions related to the Memorandum of Agreement (MOA) that was scheduled to be considered by Council on January 25. In addition, on February 2, the Program Management Committee, consisting of representatives from all of the jurisdictions that participate in the Program, held a special meeting to discuss the District's intent and the alternatives for approval of the MOA to continue the Program and alternatives for application submittal for stormwater permit re-issuance. The actions taken by the Water District and the Program Management Committee necessitated that City Council provide additional authority and direction in order to respond flexibly to the actions of the District as well as the thirteen other Program Co-permittees.

### RECOMMENDATION

- 1) Adoption of a resolution authorizing the City Manager to execute an Amendment to the Memorandum of Agreement (Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program (Program)); continuing the authority of the Director of Environmental Services to designate a City representative to serve on the Program Management Committee; and authorizing the City's joinder in an application for re-issuance of the Program National Pollutant Discharge Elimination System (NPDES) permit.

- 2) Authorize the Director of Environmental Services to:
  - a. negotiate with Program co-permittees to make adjustments to the cost-sharing formula of the Program MOA, to be effective July 1, 2005, if the Santa Clara Valley Water District (Water District) approves the MOA Amendment, and
  - b. negotiate a separate MOA with the remaining thirteen co-permittees, if the Water District does not approve the MOA Amendment.
- 3) Direct staff to return to Council on or before March 1, 2005 with a recommendation for continuation of the Program beyond March 10, 2005, if the Water District does not approve the MOA Amendment.

### **BACKGROUND**

Recommendations regarding this subject were originally scheduled for Council consideration on January 25, 2005, but deferred to February 8, 2005 in light of emerging events.

On January 18, the Water District Board of Directors considered actions regarding the Program MOA. In a summary provided to the Program Management Committee, the Water District cited the recently announced loss of 10 percent of the total District revenues to the State as the impetus for reconsidering both extension of the MOA and the level of Water District participation in the Program. The District reported that the state action resulted in a loss of 64 percent of the District's property tax revenues for the next two years, a total loss of about \$51 million. They further reported that their role as the Program fiscal agent led to the direct loss of \$580,000 because the funds collected from the co-permittees were calculated as part of their revenue. The Water District Board took the following actions:

- 1) Directed the CEO to not sign the proposed amendment in light of present fiscal circumstances.
- 2) Directed the CEO to indicate desire to extend the MOA but need to negotiate a change in the District funding of the Program, which is currently set at 30.02%.
- 2) Directed the CEO to formally notify the Program of the District intent to no longer serve as the Program's fiscal agent.
- 4) Authorized the CEO to initiate a re-evaluation of the proportion of the annual program that the District should pay.
- 5) Authorized the CEO to seek reimbursement of the property tax loss to the District due to serving as the Program's fiscal agent.

The Program Management Committee held a special meeting on February 2, 2005 to discuss the District's intent and the alternatives for approval of the MOA to continue the Program and alternatives for application submittal for stormwater permit re-issuance. At that meeting, the Water District representative presented a proposal for amending the MOA to extend only for term of six years (through the next NPDES permit cycle) and to substantially reduce the level of the District's participation in the Program, with any shortage in funding for the Program to be picked up by the other Co-Permittees. The Program Management Committee members indicated a willingness to reconsider the costs sharing formula in the MOA, but could not do so prior to the March 10, 2005 expiration of the current MOA. Accordingly, the Program Management Committee, with the exception the Water District representative, approved a position statement that urges adoption of the currently accepted MOA Amendment prior to February 17, 2005 (the next scheduled meeting of the Management Committee), which provides for continuation of the Program and retains a voluntary termination provision, with the understanding that the Management Committee would intend to consider a second MOA amendment which would address potential changes to the cost sharing allocations to be effective July 1, 2005.

### **ANALYSIS**

The Boards and Councils of thirteen of the fifteen co-permittees have approved the MOA to extend the Program with no change in the funding formula. Only the approval of San José and the Water District remain outstanding. Unanimous approval of the recommended MOA Amendment is required in order for the Amendment to be valid. An alternate amendment would require thirteen agencies to return to their governing bodies in undue haste.

The events described above cast significant uncertainty upon the continuation of the Program as currently constituted and do so in the face of two important deadlines – a required permit re-application by February 26, 2005 and the expiration of the current Program MOA on March 10, 2005. Due to these circumstances, staff seeks additional authority and direction in order to respond flexibly to changing conditions and to return to Council in a timely manner.

### **PUBLIC OUTREACH**

Circumstances regarding approval of the Program MOA have been discussed during scheduled meetings of the Program Management Committee, which are public meetings. Public comment is accepted during that period.

### **COORDINATION**

This recommendation has been coordinated with the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

2-4-05

**Subject: Memorandum of Agreement for the SC Valley Urban Runoff Pollution Prevention Program**

Page 4

**COST IMPLICATION**

There are no additional costs associated with this supplement to the original recommendation. Staff will return with recommendations on any proposed adjustment to cost sharing and address cost implications at that time.



CARL W. MOSHER

Director, Environmental Services Department

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